
TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Economic Impact Statement

LSA Document #13-422

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

This memorandum is submitted in accordance with [IC 4-22-2.1](#), and formalizes the Family and Social Services Administration (FSSA) Office of Medicaid Policy and Planning's (OMPP) analysis of the impact of the attached rule amendment on small businesses.

The OMPP proposes to continue the following rate reimbursement reductions as indicated:

- (1) The five percent (5%) rate reduction for rates paid to Home Health Agencies (HHA) is currently set to expire on December 31, 2013, in accordance with state regulations at [405 IAC 1-4.2](#), as amended by LSA Document #11-381(E), posted at [20110629-IR-405110381ERA](#). The General Assembly extended the expiration date of LSA Document #11-381(E), which was to expire on June 30, 2013, to December 31, 2013, with SECTION 180 of P.L.205-2013. OMPP now intends to reduce this rate reduction to three percent (3%) and extend it for the period from January 1, 2014, through June 30, 2015.
- (2) The five percent (5%) rate reduction for rates paid to outpatient hospitals is currently set to expire on December 31, 2013, in accordance with state regulations at [405 IAC 1-8](#), as amended by LSA Document #11-381(E), posted at [20110629-IR-405110381ERA](#). The General Assembly extended the expiration date of LSA Document #11-381(E), which was to expire on June 30, 2013, to December 31, 2013, with SECTION 180 of P.L.205-2013. OMPP now intends to reduce this rate reduction to three percent (3%) and extend it for the period from January 1, 2014, through June 30, 2015.
- (3) The five percent (5%) rate reduction for rates paid to inpatient hospitals is currently set to expire on December 31, 2013, in accordance with state regulations at [405 IAC 1-10.5](#), as amended by LSA Document #11-381(E), posted at [20110629-IR-405110381ERA](#). The General Assembly extended the expiration date of LSA Document #11-381(E), which was to expire on June 30, 2013, to December 31, 2013, with SECTION 180 of P.L.205-2013. OMPP now intends to reduce this rate reduction to three percent (3%) and extend it for the period from January 1, 2014, through June 30, 2015.
- (4) The three percent (3%) rate reduction for rates paid to Private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), and Community Residential Facilities for the Mentally Retarded (CRF/DD) is currently set to expire on December 31, 2013, in accordance with state regulations at [405 IAC 1-12](#), as amended by LSA Document #11-381(E), posted at [20110629-IR-405110381ERA](#). The General Assembly extended the expiration date of LSA Document #11-381(E), which was to expire on June 30, 2013, to December 31, 2013, with SECTION 180 of P.L.205-2013. OMPP now intends to reduce this rate reduction to one percent (1%) and extend it for the period from January 1, 2014, through June 30, 2015.
- (5) The five percent (5%) rate reduction for rates paid to Nursing Facilities (NF) is currently set to expire on December 31, 2013, in accordance with state regulations, at [405 IAC 1-14.6](#), as amended by LSA Document #11-380(E), posted at [20110629-IR-405110380ERA](#). The General Assembly extended the expiration date of LSA Document #11-380(E), which was to expire on June 30, 2013, to December 31, 2013, with SECTION 180 of P.L.205-2013. OMPP now intends to reduce this rate reduction to three percent (3%) and extend it for the period from January 1, 2014, through June 30, 2015.
- (6) The reduction in the pharmacy dispensing fee paid to pharmacy providers from \$4.90 to \$3 is currently set to expire on December 31, 2013, in accordance with state regulations, at [405 IAC 5-24](#), as amended by LSA Document #11-382(E), posted at [20110629-IR-405110382ERA](#). The General Assembly extended the expiration date of LSA Document #11-382(E), which was to expire on June 30, 2013, to December 31, 2013, with SECTION 180 of P.L.205-2013. OMPP now intends to reduce this rate reduction to so that the pharmacy dispensing fee is \$3.90 for the period beginning January 1, 2014.

The OMPP finds revising these rates to be necessary in order to remain within the available Medicaid appropriation.

The OMPP also proposes to make the following permanent changes:

(1) HAC/OPPC Changes: This rule amendment modifies Medicaid reimbursement policy to expand to all inpatient hospitals the current policy set forth in state regulations at [405 IAC 1-10.5](#) preventing inpatient hospital discharges containing specified health care-acquired conditions not present on admission from assignment to a higher paying DRG. Under this rule amendment, the hospital-acquired conditions policy will now apply to all inpatient hospital services. Previously, the policy mirrored Medicare policy and did not apply to hospitals that were excluded under Medicare policy (critical access hospitals and hospitals that are not reimbursed under the DRG prospective payment system, such as psychiatric hospitals, rehabilitation hospitals, and long-term acute care hospitals). This rule amendment also sets forth the following other provider-preventable conditions for nonpayment: wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; surgical or other invasive procedure performed on the wrong patient.

The OMPP finds that promulgating this rule amendment is necessary to expand to all inpatient hospitals the current inpatient hospital payment reduction policy under which higher inpatient hospital reimbursement is not made for health care-acquired conditions that could reasonably have been prevented through the application of evidenced-based guidelines. This rule amendment is also necessary to ensure payment is not made for other provider-preventable conditions. On June 6, 2011, Centers for Medicare and Medicaid Services (CMS) published a final rule in the Federal Register at 76 FR 32816 requiring that states implement a health care-acquired conditions policy that applies to all inpatient hospitals and a policy for other provider-preventable conditions. The OMPP has received approval from CMS of an amendment to the Medicaid state plan for these changes.

(2) Out-of-State Hospital Changes: This rule amendment modifies Medicaid reimbursement for out-of-state hospitals set forth in state regulations at [405 IAC 1-10.5](#). Hospital-specific cost-to-charge ratios will be computed for out-of-state hospitals that submit cost reports to the office, and medical education rates for out-of-state hospitals shall not exceed the highest medical education rate for in-state hospitals.

The OMPP finds that promulgating this rule amendment is necessary to more equitably reimburse out-of-state hospitals so that they are not paid at higher rates of reimbursement than in-state hospitals. The OMPP has submitted to CMS an amendment to the Medicaid state plan for these changes.

(3) DME, medical supplies, and hearing aids changes: This rule amendment modifies the Medicaid rate setting methodology for medical supplies, durable medical equipment (DME), and hearing aids set forth in state regulations at [405 IAC 5-16](#) by establishing the Medicare fee schedule amounts as the basis for calculating medical supply rates before acquisition cost or the manufacturer's suggested retail price are utilized, by establishing acquisition cost and the manufacturer's suggested retail price as the basis for calculating DME rates in addition to the Medicare fee schedule amounts, by establishing acquisition cost and the manufacturer's suggested retail price as the basis for calculating hearing aid rates, and establishes a hearing aid dispensing fee.

The OMPP finds that promulgating this rule amendment to modify the medical supplies, DME, and hearing aid rate setting methodologies is necessary in order to achieve consistency in rate development between these services and to facilitate the establishment or revision of rates. The OMPP finds that promulgating this rule amendment to establish a hearing aid dispensing fee is necessary in order to reimburse providers for dispensing hearing aids that have established fee schedule rates, which do not include payment for dispensing activities. The OMPP has received approval from CMS of an amendment to the Medicaid state plan for these changes.

Impact on Small Business

The following section provides responses to the following questions outlined in [IC 4-22-2.1-5](#):

1. An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.

[IC 5-28-2-6](#) defines a small business as a business entity that satisfies the following requirements:

- (1) On at least fifty percent (50%) of the working days of the business entity occurring during the preceding calendar year, the business entity employed not more than one hundred fifty (150) employees.
- (2) The majority of the employees of the business entity work in Indiana.

The OMPP estimates the number of businesses that are Medicaid certified and meet the criteria of a small business to be as follows:

Rate Reductions:

- a. HHAs – 175 out of 243 Indiana providers
- b. Outpatient Hospitals – 4 out of 144 Indiana providers
- c. Inpatient Hospitals – 6 out of 162 Indiana providers
- d. ICFs/IID and CRFs/DD – 228 out of 540 Indiana providers
- e. NFs – 80 out of 490 Indiana providers
- f. Pharmacies – 193 out of 1,195 Indiana providers

Other changes:

- a. HAC/OPPC changes – 2,546 out of 4,252 Indiana providers. The providers impacted by the HAC changes are hospitals. The providers impacted by the OPPC changes are hospitals, ambulatory surgical centers, physicians, and limited license practitioners.
- b. Out-of-state hospital changes – There are no Indiana providers impacted by this change.
- c. DME, medical supplies, and hearing aids changes – 2,219 out of 4,511 Indiana providers.

2. An estimate of the average annual reporting, record keeping, and other administrative costs that small business will incur to comply with the proposed rule.

Certain hospitals that were not previously required to report the present-on-admission (POA) indicator on inpatient claims will now be required to report this indicator in order to comply with this federal requirement. All providers will be required to report specified diagnosis codes or modifiers, or both, when billing claims for other provider-preventable conditions. Otherwise, the proposed rule amendment will not impose any

additional annual reporting, record keeping, or other administrative costs on small businesses in order to comply with the proposed rule.

3. An estimate of the total annual economic impact that compliance will have on small businesses subject to the rule.

There is no economic impact that compliance will have on a small business subject to this rule, since no small businesses will incur any additional cost to comply with this rule other than the federally-mandated reporting and billing requirements noted in item #2 above.

4. A statement justifying any requirement or cost that is imposed by the rule and not expressly required by law. The statement must reference any data, studies, or analyses relied upon by the agency in determining imposition of the requirement or cost is necessary.

The proposed rule amendment will not impose any requirement or cost on small businesses in order to comply with the proposed rule other than the federally-mandated reporting and billing requirements noted in item #2 above.

5. Any regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the same purpose.

Other factors considered:

A. Establishment of less stringent compliance or reporting requirements for small businesses.

The rule has no impact on reporting requirements for small businesses.

B. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

The rule has no impact on schedules or deadlines for compliance or reporting requirements for small businesses.

C. Consolidation or simplification of compliance or reporting requirements for small businesses.

The rule has no impact on compliance or reporting requirements for small businesses.

D. Establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

The rule has no impact on performance or operational standards for small businesses.

E. Exemption of small businesses from part or all of the requirements or costs imposed by the rule.

The rule imposes no additional requirements or cost on small businesses.

If there are any programmatic or fiscal questions, please contact Joy Heim at (317) 234-4753 or at joy.heim@fssa.in.gov. Questions regarding any other aspect of the proposed changes should also be addressed to Kim Crawford at (317) 232-1244 or at kim.crawford@fssa.in.gov.

Please contact Kim Crawford at (317) 232-1244 or at kim.crawford@fssa.in.gov regarding IEDC's comments about this rule amendment. The public hearing will be scheduled after receiving authorization from Legislative Services Agency to do so. Ms. Crawford will then contact you to provide the date of the hearing for your convenience.

Posted: 10/09/2013 by Legislative Services Agency

An [html](#) version of this document.